

BUSINESS REPORT

**MONTANA HOUSE OF REPRESENTATIVES
61st LEGISLATURE - REGULAR SESSION**

HOUSE BUSINESS AND LABOR COMMITTEE

Date: Tuesday, February 3, 2009

Time: 8:30 am

Place: Capitol

Room: 172

BILLS and RESOLUTIONS HEARD:

Prefix (HB, HR, HJR, SB, SR, or SJR) and number. Add Postponed (PP) when appropriate:

HB 286, SB 42

EXECUTIVE ACTION TAKEN:

Prefix (HB, HR, HJR, SB, SR, or SJR) and number. Enter P(pass) F(failed) DPAA (do pass as amended) BC(be concurred in) BCAA (be concurred in as amended):

HB 211 PA HB 297 F _____

HB 225 F HB 159 _____

HB 250 _____

HB 291 F _____

COMMENTS:



REP. Bill Wilson, Chairman

HOUSE OF REPRESENTATIVES
Roll Call
BUSINESS AND LABOR COMMITTEE

DATE: 2/3/09

<u>NAME</u>	<u>PRESENT</u>	<u>ABSENT/ EXCUSED</u>
Rep. Michele Reinhart	X	
Rep. Bill Beck	X	
Rep. Elsie Arntzen	X	
Rep. Shannon Augare	X	
Rep. Paul Beck	X	
Rep. Tom Berry	X	
Rep. Carlie Boland	X	
Rep. John Fleming	X	
Rep. Timothy Furey	X	
Rep. Chuck Hunter	X	
Rep. Harry Klock	X	
Rep. Mike Milburn	X	
Rep. Pat Noonan	X	
Rep. Scott Reichner	X	
Rep. Cary Smith	X	
Rep. Gordon Vance	X	
Rep. Jeffery Welborn	X	
Rep. Bill Wilson	X	



HOUSE STANDING COMMITTEE REPORT

February 3, 2009

Page 1 of 1

Mr. Speaker:

We, your committee on **Business and Labor** recommend that **House Bill 250** (first reading copy – white) **do pass**.

Signed: _____

Bill Wilson
Representative Bill Wilson, Chair

- END -

Committee Vote:

Yes 18, No 0

Fiscal Note Required ☐

HB0250001SC.hjd



HOUSE STANDING COMMITTEE REPORT

February 3, 2009

Page 1 of 1

Mr. Speaker:

We, your committee on **Business and Labor** recommend that **House Bill 211** (first reading copy – white) **do pass as amended.**

Signed: _____

Bill Wilson
Representative Bill Wilson, Chair

And, that such amendments read:

1. Title, line 10.

Following: "AGE;"

Insert: "PROVIDING FOR REVOCATION OF A CERTIFICATION FOR
EXCESSIVE VIOLATIONS;"

2. Page 3, line 1.

Following: "annually"

Strike: ", and the certification may be revoked for noncompliance
with [section 5]"

3. Page 3, following line 1.

Insert: "(2) (a) A certification may be revoked for noncompliance
with [section 5]. A certification must be revoked if a
vendor is determined by the department to be guilty of
excessive violations of 16-3-301 with respect to the
vendor's or the vendor's employees selling, delivering, or
giving alcoholic beverages to underage persons.

(b) For the purposes of this subsection (2), "excessive
violations" means more than four violations described in
subsection (2) (a) in a 3-year period."

Renumber: subsequent subsection

- END -

Committee Vote:

Yes 15, No 3

Fiscal Note Required ☐

HB0211001SC.hjd

COMMITTEE FILE COPY

TABLED BILL

The **HOUSE BUSINESS AND LABOR COMMITTEE** TABLED **HB 297**, by motion, on **Tuesday, February 3, 2009**.

(For the Committee)

(Chief Clerk of the House)

(Time) / (Date)

February 3, 2009

Santella Baglivo, Secretary

Phone: 4457



HOUSE STANDING COMMITTEE REPORT

February 3, 2009

Page 1 of 1

Mr. Speaker:

We, your committee on **Business and Labor** recommend that **House Bill 159** (first reading copy – white) **do pass as amended.**

Signed: _____

Bill Wilson
Representative Bill Wilson, Chair

And, that such amendments read:

1. Title, line 9.

Following: "SECRETS"

Insert: "AND ARE PRIVILEGED"

2. Page 2, line 18.

Following: "secrets and"

Insert: "are privileged. The materials"

3. Page 2, line 19 through line 21.

Following: "litigation" on page 2, line 19

Strike: ", provided" on page 2, line 19 through "privilege" on page 2, line 21

- END -

Committee Vote:

Yes 18, No 0

Fiscal Note Required ☐

HB0159001SC.hjd

HOUSE OF REPRESENTATIVES
Roll Call Vote
BUSINESS AND LABOR COMMITTEE

DATE 2/3/09 BILL NO HB291 MOTION NO. _____
 MOTION: _____

Do Pass

<u>NAME</u>	AYE	NO	If Proxy Vote, check here & include signed Proxy Form with minutes
Rep. Michele Reinhart		X	
Rep. Bill Beck	X		
Rep. Elsie Arntzen	X		X
Rep. Shannon Augare	X		
Rep. Paul Beck		X	
Rep. Tom Berry		X	
Rep. Carlie Boland		X	
Rep. John Fleming		X	
Rep. Timothy Furey		X	
Rep. Chuck Hunter	X		
Rep. Harry Klock	X		
Rep. Mike Milburn	X		X
Rep. Pat Noonan		X	
Rep. Scott Reichner	X		
Rep. Cary Smith		X	
Rep. Gordon Vance	X		
Rep. Jeffery Welborn	X		
Rep. Bill Wilson		X	

Tie

HOUSE OF REPRESENTATIVES
Roll Call Vote
BUSINESS AND LABOR COMMITTEE

DATE 2/3/09 BILL NO. HB225 MOTION NO. _____
 MOTION: _____

DO PASS

<u>NAME</u>	<u>AYE</u>	<u>NO</u>	If Proxy Vote, check here & include signed Proxy Form with minutes
Rep. Michele Reinhart	X		
Rep. Bill Beck		X	
Rep. Elsie Arntzen		X	
Rep. Shannon Augare	X		
Rep. Paul Beck	X		
Rep. Tom Berry		X	
Rep. Carlie Boland	X		
Rep. John Fleming	X		
Rep. Timothy Furey	X		
Rep. Chuck Hunter	X		
Rep. Harry Klock		X	
Rep. Mike Milburn		X	X
Rep. Pat Noonan	X		
Rep. Scott Reichner		X	
Rep. Cary Smith		X	
Rep. Gordon Vance		X	
Rep. Jeffery Welborn		X	
Rep. Bill Wilson	X		

Tie

Tabled

HOUSE OF REPRESENTATIVES
Roll Call Vote
BUSINESS AND LABOR COMMITTEE

DATE 2/3/09 BILL NO. HB 297 MOTION NO. _____
 MOTION: _____

DO PASS

<u>NAME</u>	<u>AYE</u>	<u>NO</u>	If Proxy Vote, check here & include signed Proxy Form with minutes
Rep. Michele Reinhart	X		
Rep. Bill Beck		X	
Rep. Elsie Arntzen		X	
Rep. Shannon Augare		X	
Rep. Paul Beck		X	
Rep. Tom Berry		X	
Rep. Carlie Boland		X	
Rep. John Fleming		X	
Rep. Timothy Furey	X		
Rep. Chuck Hunter	X		
Rep. Harry Klock		X	
Rep. Mike Milburn		X	X
Rep. Pat Noonan	X		
Rep. Scott Reichner		X	
Rep. Cary Smith		X	
Rep. Gordon Vance		X	
Rep. Jeffery Welborn		X	
Rep. Bill Wilson		X	

HOUSE OF REPRESENTATIVES
Roll Call Vote
BUSINESS AND LABOR COMMITTEE

DATE 2/3/09 BILL NO HB 211 MOTION NO. _____
 MOTION: _____

Do Pass as Amended

<u>NAME</u>	AYE	NO	If Proxy Vote, check here & include signed Proxy Form with minutes
Rep. Michele Reinhart		X	
Rep. Bill Beck	X		
Rep. Elsie Arntzen	X		
Rep. Shannon Augare		X	
Rep. Paul Beck	X		
Rep. Tom Berry	X		
Rep. Carlie Boland	X		
Rep. John Fleming	X		
Rep. Timothy Furey	X		
Rep. Chuck Hunter	X		
Rep. Harry Klock	X		
Rep. Mike Milburn	X		
Rep. Pat Noonan		X	
Rep. Scott Reichner	X		
Rep. Cary Smith	X		
Rep. Gordon Vance	X		
Rep. Jeffery Welborn	X		
Rep. Bill Wilson	X		

AUTHORIZED COMMITTEE PROXY

I request to be excused from the Business + Labor

Committee because of other commitments. I desire to leave my proxy vote with:

Rep. Bill Bell

Indicate Bill number and your vote Aye or No. If there are amendments, list them by name and number under the bill and indicate a separate vote for each amendment.

BILL/AMENDMENT

AYE NO

HB 244	AYE	
HB 225	AYE	✓
HB 250	✓	
HB 291		✓
HB 159	✓	
HB 297		✓
HB 211	✓	

BILL/AMENDMENT

AYE NO

Rep. [Signature]
(Signature)

Date Feb 3, 2009

AUTHORIZED COMMITTEE PROXY

I request to be excused from the Business & Labor

Committee because of other commitments. I desire to leave my proxy vote with:

Rep. Eric Burl

Indicate Bill number and your vote Aye or No. If there are amendments, list them by name and number under the bill and indicate a separate vote for each amendment.

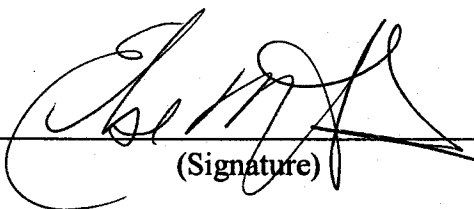
BILL/AMENDMENT

AYE NO

HB - 225		✓
HB - F		

BILL/AMENDMENT

AYE NO

Rep. 
(Signature)

Date Feb 3, 2009

**Montana House of Representatives
Visitors Register**

BUSINESS AND LABOR COMMITTEE

Date 2/3/09

Bill No. HB 286 Sponsor(s) Rep. Sonju

PLEASE PRINT

PLEASE PRINT

PLEASE PRINT

Name and Address	Representing	Support	Oppose	Inf.
<i>Ed Litten Billings</i>	<i>Auto Repair</i>	<input checked="" type="checkbox"/>		
<i>Mike Mitchell G.F.</i>	<i>Collision Rpr</i>	<input checked="" type="checkbox"/>		
<i>Bruce HALCRO</i>	<i>Collision Repair</i>	<input checked="" type="checkbox"/>		
<i>TANET CHANEY</i>	<i>COLLISION REP.</i>	<input checked="" type="checkbox"/>		
<i>Donna Fastenau</i>	<i>Collision Repair</i>	<input checked="" type="checkbox"/>		
<i>Max Yates</i>	<i>Collision Repair</i>	<input checked="" type="checkbox"/>		
<i>Greg VanHorn</i>	<i>State Farm</i>		<input checked="" type="checkbox"/>	
<i>Jacqueline Gunnmark</i>	<i>AIA</i>		<input checked="" type="checkbox"/>	
<i>Bruce Spencer</i>	<i>PCI</i>		<input checked="" type="checkbox"/>	
<i>Valerie Jamison</i>	<i>ALLSTATE</i>		<input checked="" type="checkbox"/>	
<i>Jon Petropoulos</i>	<i>Farmers'</i>		<input checked="" type="checkbox"/>	
<i>IREW GELSON</i>	<i>COLLISION ASSOC</i>	<input checked="" type="checkbox"/>		

Please leave prepared testimony with Secretary. Witness Statement forms are available if you care to submit written testimony.

Montana House of Representatives Visitors Register

BUSINESS AND LABOR COMMITTEE

Date 2/3/09

Bill No. SB 42 Sponsor(s) Rep. Laslovich

PLEASE PRINT

PLEASE PRINT

PLEASE PRINT

[illegible]

Please leave prepared testimony with Secretary. Witness Statement forms are available if you care to submit written testimony.

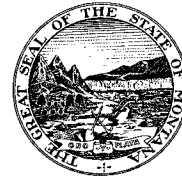
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Additional Document



Dan Bucks
Director

Montana Department of Revenue



Brian Schweitzer
Governor

MEMORANDUM

To: The Honorable Bill Wilson, Chair
House Business and Labor Committee

From: Dan Bucks, Director *Dan Bucks*

Date: January 29, 2009

Subject: House Bill 94

2-3-09
HB 94

Thank you for accommodating the Department and allowing us to express our concerns about the language of House Bill 94. While our concerns are substantial, we remain committed to working with the sponsor and proponents to craft amendments that resolve these concerns. We suggest in the enclosed material ideas for a successful resolution.

Enclosed please find a joint memorandum from Michael Lawlor, Tax Counsel for the Department and Shauna Helfert, the Administrator of the Liquor Control Division. As they explain, the Department has several concerns about the bill, including:

- While the clearly-stated policy of the state is that the Department exercise the state's "entire control" of alcoholic beverages, the bill would shift a significant portion of this control away from the state and to private entities.
- The bill could undermine the "three tier system" of the alcoholic beverage industry by allowing lenders to gain control of multiple tiers of that system.

In addition, the Department has sought the opinion of Jack A Blum, a Washington, DC, attorney who is a noted expert on issues involving money laundering, tax evasion, and bank compliance. Mr. Blum's clients have included government agencies such as the Internal Revenue Service and the California Franchise Tax Board, major financial businesses such as Fidelity Investments, and international organizations including the United Nations Office of Drug Control and Crime Prevention. Mr. Blum has served as legal counsel to the U.S. Senate Foreign Relations Committee and to the Antitrust Subcommittee of the Committee on the Judiciary.

In recent years, Mr. Blum has made numerous presentations related to money laundering, banking, and tax scams, to entities including the Russian Finance Ministry, the French Senate, the U.S. National Security Agency, and the U.S. Senate Finance Committee.

Please see Mr. Blum's attached memorandum in which he expresses his opinion that HB94 will reduce the state's control over liquor licenses, and could open the door to licenses being used by criminal entities for money laundering, tax evasion, and other illegal purposes.

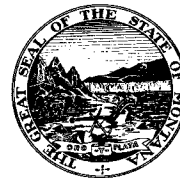
Again, we remain committed to working to resolve the concerns we have raised here.

Enc: Lawlor-Helfert Memorandum 1-29-09 and Jack Blum Memorandum 1-29-09



Dan Bucks
Director

Montana Department of Revenue



Brian Schweitzer
Governor

Memorandum

To: Dan Bucks, Director

From: Michael M. Lawlor, Tax Counsel *Michael M. Lawlor*
Shauna Helfert, Division Administrator, Liquor Control Division *SH*

Date: January 29, 2009

Subject: Department's Concerns Regarding House Bill 94

Summary of Concerns Regarding HB94

The Department has serious concerns about the effect House Bill 94 would have on its ability to effectively carry out its duties under the Montana Alcoholic Beverage Code (MABC), and about potential negative effects to businesses and members of the public. These concerns can be summarized as follows:

1. Under the MABC, the state, acting through the Department, is tasked with having the "entire control" over alcoholic beverages. This is an exercise of the state's police powers, and is specifically authorized by the United States Constitution. Contrary to the state's ability to exercise this entire control, the language of HB 94 would allow certain lenders to exercise whatever degree of control they wished over licenses merely by including language in their lending agreements which would give them such control.
2. The statutory three tier system of alcohol manufacture, distribution, and retail, under which each of those functions are kept separate from one another, could not be effectively monitored by the Department and would be undermined by lenders which could gain control of multiple tiers of that system through the language of their lending agreements.
3. Finally, an unintended future consequence of HB94 could be to open a door to increased criminal activity in the state.

Purpose and Policy of the Montana Alcoholic Beverage Code

The Montana Alcoholic Beverage Code, Title 16, Chapters 1-4, 6, MCA, provides that the state, acting through the Department of Revenue (Department), is to "effectuate and ensure the **entire control** of the manufacture, sale, importation, and distribution of alcoholic beverages within the state". §16-1-101(2) (emphasis added). This control is exercised by the state pursuant to the 21st Amendment of the United States constitution, and is part of the state's police powers, "for the protection of the welfare, health, peace, morals, and safety of the people of the state," and the provisions of the MABC "must be broadly construed to accomplish these purposes." §16-1-101(3). The Department's most serious concerns with HB94 are that it proposes to change §16-4-801 in ways which will impact the statutory three tier system (described below) as well as the Department's ability to carry out the policy and purpose for the MABC: that the state exercise the "entire control" over alcoholic beverages. This would be accomplished by shifting a large measure of that control now exercised by the state (through the Department) instead to the private lenders who have financed the licenses.

"Control" of Licenses

The Department recognizes – and MABC allows for – that licensees will often need financing through lenders; this is in part because some types of licenses are limited in numbers by geographic areas through a quota system, and are therefore very valuable in some areas where the quota is met and demand is high. (Even for non-quota licenses, financing is often necessary for licensees due to all the other costs of acquiring or starting a business.) Lenders, of course, need collateral for their loans, which in most cases will include the license itself. Section 16-4-801, as it exists

currently, describes what constitutes a security interest in a liquor license, what constitutes a default, and the procedures to be followed in the event of a default. (Notwithstanding the implication of the language of HB94 at page 2, lines 21-22 – which may give the impression that regulated lenders are not already allowed to obtain security interests – existing law clearly allows for such security interests.) The statute provides that the Department is to review the underlying documents creating the security interest before determining whether to approve the transfer of ownership of a license. The statute further provides that the holder of a security interest “may not have any control in the operation of the business operated under a license”. §16-4-801(2).

Under HB94, the Department’s responsibility under §16-4-801(2) to review the loan documents and then exercise its discretion in determining whether to approve the transfer of ownership would, in the case of a “regulated lender,” be rendered meaningless. The language of the bill would empower such lenders to use any language they so wish in their lending documents – giving the lender any degree of control they so desired over the license and the licensee’s business – and the Department would be powerless to fulfill its statutory duty of exercising the entire control over the license.

The only restriction HB94 places on what language a lender can use is that the language be consistent with what it generally uses in lending documents (for all types of loans, not merely liquor license loans). This is really no restriction at all, because a lender has full control (and the Department no control whatsoever) in the language that is generally used in a lender’s lending documents. This provision of HB94 is thus inconsistent with §16-4-801(2) and with the overall policy of the MABC set forth at §16-

Additional Document

Memo

To: Dan Bucks

From: Jack Blum

CC: Michael Lawlor, Esq., Shauna Helfert

Date: 1/29/2009

Re: Concerns regarding liquor license bank debt

2-3-09
HB 94

My practice has focused on issues involving money laundering, tax evasion, and bank compliance. My clients include the Internal Revenue Service, the State of California Franchise tax Board and Fidelity investments. I have qualified as an expert witness on evasion in Federal tax court.

The question you have raised is whether proposed legislation broadening the authority of banks to choose the remedies they may use in the event of a loan default by a liquor licensee might deprive the state of the ability to control the liquor industry and to prevent the use of a license to launder money or evade taxation. I believe it will.

The State has offered to accept the banker's legislative idea if it listed the specific remedies which would be available to the banks and did not diminish the state's power to exercise entire control over liquor licenses. The bankers refused, demonstrating that limiting the state's regulatory power was what they had in mind.

The proposed legislation would allow the "regulated lender" (or other subsequent debt holder) all the rights that debt holders in other jurisdictions have against a defaulting debtor. The bankers say they need the changes to allow themselves all common law remedies against defaulting debtors and to improve the value of the security they hold -- an improvement, the bankers say would enhance the balance sheets of their banks. Obviously, if they are right, the value is created by the increased marketability of liquor license loans. The state cannot give up control of its liquor licenses to aid bank balance sheets.

The obvious State concern is that granting the lender additional rights might interfere with the ability of the State to control the ownership of the license, its method of operation, and its location. By buying liquor license debt from a bank, an individual or corporation could evade state regulation of the liquor industry.

The issue of control is especially sensitive in the liquor industry. Liquor licensees operate, for the most part, cash businesses. Montana stores generate more income than liquor stores in some other states because they are permitted to offer gambling as well as alcoholic beverages. Businesses that generate significant amounts of cash are allowed receive waivers that allow them to deposit the cash without having the deposits reported on CTR's (Cash Transaction Reports) as required by the federal anti-money laundering laws.

Because of this exemption, cash intensive businesses, especially those which appear to be regulated, are attractive to money launderers. Launderers use the cash business to cover the deposit of currency generated by drug dealing, and other forms of cash based crime, knowing that their deposits will not be reported to the FINCEN, the Treasury Department agency which monitors suspicious cash activity.

It is foreseeable that if the amendment passes, criminals interested in laundering money might buy the debt of the liquor licensees from the bank for the purpose of controlling them without changing the ownership and without being forced to apply for a license.

Further, because of recent changes in the Federal Banking laws, such as the Gramm Leach Bliley bill, which allowed banks to enter the brokerage and insurance businesses, and the increased scope of activity allowed to bank holding companies, it is foreseeable that a lightly regulated foreign (out of state) bank could get control of a Montana licensee and use that license for nefarious purposes. If the law is to be changed, it must not derogate the power of the state over its liquor licensees.